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Letter dated 18 October 2016 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and to Security Council resolution 2277 (2016), by which the Council renewed the mandate of MONUSCO until 31 March 2017.

As the Security Council is aware, the Government of the Democratic Republic of the Congo requested MONUSCO on 16 August 2016 to extract former First Vice-President of South Sudan, Riek Machar, his wife and his son from a location inside the Garamba National Park (Haut-Uélé), where they were located after having crossed the border between the Democratic Republic of the Congo and the Republic of South Sudan with several hundred armed personnel as well as some civilians. Further to the request of the Government, MONUSCO and the Government coordinated the extraction, on humanitarian grounds, of Mr. Machar, his wife and his son, as well as 10 other individuals, from the Garamba National Park. They were transported to Dungu (Haut-Uélé), where they received medical treatment. On 18 August 2016, Mr. Machar, his wife and six others were transferred to Doko (Bas-Uélé), where they were met by authorities from the Democratic Republic of the Congo. The five remaining individuals, including Mr. Machar's son, were transferred to the MONUSCO base in Bunia (Ituri). On 22 August 2016, they were then transferred to Kinshasa, where they were met by the authorities of the Democratic Republic of the Congo. The Government of the Republic of South Sudan was subsequently informed of the steps taken.

From 17 August to 12 September 2016, MONUSCO, in consultation with the Government of the Democratic Republic of the Congo, extracted 755 personnel of the Sudan People's Liberation Movement/Army in Opposition (SPLM/A in Opposition) elements from the Garamba National Park, on lifesaving, humanitarian grounds. Of these 755 personnel, 117 were transported to Buta (Bas-Uélé) at the request of the Government of the Democratic Republic of the Congo, where they were met by representatives of the Government. On 19 September 2016, four additional individuals were extracted by park rangers of the Institut congolais pour la conservation de la nature and brought to MONUSCO in Dungu. In total, eight of those extracted by MONUSCO succumbed either to their injuries, malnutrition or ill health while in the Mission's medical facilities in Bunia and Goma. The 634 remaining personnel are currently in MONUSCO-run medical facilities or MONUSCO transit camps in Dungu and Munigi (Nord-Kivu), except for two who

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have been transferred to a non-MONUSCO hospital in Kinshasa to receive medical treatment. The group has voluntarily handed over to the Mission 134 weapons, which have been secured by MONUSCO.

Since 16 August 2016, when the Mission was first advised of the presence of SPLM/A in Opposition personnel in the territory of the Democratic Republic of the Congo, MONUSCO has been in regular contact with the authorities of the Democratic Republic of the Congo, keeping them informed and encouraging them to find a sustainable solution for these personnel. The United Nations Secretariat has been engaging with both the Permanent Missions of the Democratic Republic of the Congo and of the Republic of South Sudan to the United Nations, calling for an agreement on the repatriation of the South Sudanese nationals or their relocation to a third country in a manner consistent with international law.

With regard to the latter option, the Secretariat has, in parallel, requested the African Union Commission to help to identify a third country that could temporarily accommodate these elements, pending a political agreement in South Sudan that would allow their return to their country of origin. The Secretariat also brought the matter to the attention of former President Festus Mogae of the Joint Monitoring and Evaluation Commission of the South Sudan peace agreement, for the matter to be addressed with the parties in the negotiations on transitional security arrangements concerning the integration of forces, disarmament and demobilization of fighters in South Sudan. In addition, the Secretariat is in contact with the Intergovernmental Authority on Development and with other regional partners, encouraging them to urgently identify temporary relocation options. The International Committee of the Red Cross, both in Kinshasa and in New York, has also been informed of the developments and encouraged to play a role in finding a solution.

In the margins of the General Assembly, the Secretariat engaged the Government delegation of the Democratic Republic of the Congo on a possible mandate for MONUSCO to physically intern the SPLM/A in Opposition personnel for and on behalf of the Government of the Democratic Republic of the Congo, as a short-term interim measure, until the Democratic Republic of the Congo would be in a position itself to carry out their physical internment. The Minister for Foreign Affairs of the Democratic Republic of the Congo expressed the view that it was the responsibility of the United Nations, including MONUSCO, to repatriate as soon as possible the SPLM/A in Opposition personnel to South Sudan, with the necessary guarantees that the South Sudanese authorities would respect the rights of those elements.

On 3 October 2016, the Government of the Democratic Republic of the Congo informed my Special Representative, in a note verbale dated 1 October 2016, of its decision to grant the SPLM/A in Opposition one week, starting on 3 October 2016, to leave the territory of the Democratic Republic of the Congo, while requesting the Mission to make all the necessary arrangements for its evacuation. A copy of the note verbale is attached.*

MONUSCO does not have the legal authority to expel the SPLM/A in Opposition elements from the territory of the Democratic Republic of the Congo. At

* The note verbale was made available to the members of the Security Council only.

the same time, there is no basis for MONUSCO to continue providing humanitarian assistance to them, as they are no longer in a life-threatening situation — except for two persons. Moreover, there is no prospect of enrolling the SPLM/A in Opposition personnel in a disarmament, demobilization, repatriation, reintegration and resettlement programme, since there is no guarantee that they will not return to South Sudan to resume fighting, if the opportunity arises, and, as matters stand, there is no clear legal basis in its mandate for MONUSCO to hold them against their will.

In these circumstances, MONUSCO has advised the Government of the Democratic Republic of the Congo that it is no longer in a position to continue to take care of the SPLM/A in Opposition personnel. The Mission has recalled that it is the responsibility of the Government to ensure that the SPLM/A in Opposition personnel on its territory do not return to South Sudan to participate in the armed conflict in that country and that it is also its responsibility to ensure that the SPLM/A in Opposition personnel are not expelled, either directly or indirectly, to a country where they would be exposed to a real risk of summary execution, disappearance, torture or other serious violations of their human rights. In this regard, my Special Representative has conveyed to the authorities of the Democratic Republic of the Congo that MONUSCO remains at the disposal of the Government to provide any assistance within the limits of its mandate to ensure that the Government fulfils its international obligations.

Pursuant to resolution 2277 (2016), MONUSCO will dispose of the weapons that were handed over by the SPLM/A in Opposition personnel prior to their extraction from the Garamba National Park. The Mission has already exchanged relevant information with the Group of Experts on the Democratic Republic of the Congo established pursuant to resolution 1533 (2004) and the Panel of Experts on South Sudan established pursuant to resolution 2206 (2015).

The Secretariat is contacting partners who would be in a position to more effectively engage with relevant parties to encourage an agreement between the Transitional Government of National Unity in South Sudan and Mr. Machar in order to find a permanent solution to the future of the SPLM/A in Opposition personnel currently in the Democratic Republic of the Congo, one that respects international law.

The region is also involved. On 11 October 2016, a group of experts from the Expanded Joint Verification Mechanism of the International Conference on the Great Lakes Region visited Munigi on a fact-finding exercise. They met with the SPLM/A in Opposition members currently being accommodated by MONUSCO. The Mechanism experts informed the Mission that they would issue a report to the Heads of State of the International Conference on the Great Lakes Region, with recommendations on the nature of the regional response.

In view of the foregoing, MONUSCO is faced with a situation in which it is no longer in a position to accommodate or care for the SPLM/A in Opposition personnel, though no clear arrangements have yet been put in place, or are under consideration, which would ensure that they are handled in a manner that is consistent with international law. I am, accordingly, bringing the matter to the

attention of the Security Council in order that it might take such decisions or provide such guidance as it may deem appropriate.

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.

(Signed) **BAN** Ki-moon